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8 Attorneys for Defendant the Honorable William C.
Harrison, Judge of the Superior Court and the
9 Honorable Edmund G. Brown Jr., Attorney General of
the State of California

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

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15 ALBERTA ROSE JONES,
16 Plaintiff,
17 v.
18 KELKRIS ASSOCIATES INC. DBA CREDIT
BUREAU ASSOCIATES, KATHRYN A.
19 PARSONS, TERRY A. DUREE, LINDA G.
ASHCRAFT, MICHAEL MATTHEWS,
MOES PROCESS SERVING, AVA E.
20 WILLIAMS, WENDY A. GETTY,
PATRICIA COLEMAN, SJOAN
21 CRAWFORD, KARL PHILLIPS, WILLIAM
C. HARRISON, EDMUND G. BROWN JR.
22 BARBARA BOXER, UNITED STATES OF
AMERICA AND DOES 1-100,
23 Defendants.

C-07-04421 JW

**JOINDER BY ATTORNEY GENERAL
EDMUND G. BROWN JR. IN THE
HONORABLE WILLIAM C.
HARRISON'S NOTICE OF MOTION
AND MOTION TO REMAND OR, IN
THE ALTERNATIVE, MOTION TO
DISMISS; POINTS AND
AUTHORITIES**

Date: December 3, 2007
Time: 9:00 a.m.
Place: Federal Building
280 South First Street
San Jose, California
Courtroom 8, Fourth Floor
Hon. James Ware

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26 **TO PLAINTIFF IN PROPRIA PERSONA:**
27 **PLEASE TAKE NOTICE** that on December 3, 2007, at 9:00 a. m. in Courtroom 8 of the
28 above-entitled court, located at 280 South First Street, Fourth Floor, San Jose, California, defendant

1 the Honorable Edmund G. Brown Jr., Attorney General of the State of California (hereafter,
2 "Attorney General"), will and does hereby join in the motion of the Honorable William C. Harrison
3 (hereinafter "Judge Harrison") and hereby moves to remand this action to the Superior Court or, in
4 the alternative, to dismiss this action. The Attorney General moves to remand this action because
5 neither diversity of citizenship nor a federal question exists in the underlying action of *Kelkris v.*
6 *Jones*, Solano County Superior Court Case No. FCM 093334 (28 U.S.C. § 1441(b)). Accordingly,
7 it should be summarily remanded pursuant to 28 U.S.C. section 1446(c)(4). The action should also
8 be remanded because removal was untimely and otherwise procedurally defective as set out in Judge
9 Harrison's moving papers. (28 U.S.C. § 1446.)

10 Alternatively, this action should be dismissed pursuant to Rule 12(b)(6), Federal Rules of
11 Civil Procedure, for failure to state a claim for which relief can be granted. Plaintiff's Removal
12 Notice fails to allege sufficient facts to maintain a claim for relief against the Attorney General. This
13 action is barred pursuant to the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971).

14 The motion will be based on this notice of motion, the memorandum of points and authorities
15 filed in support thereof, and on all papers and pleadings on file herein.
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1 Dated: September 14, 2007
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Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California
PAUL T. HAMMERNESS
Supervising Deputy Attorney General

TROY B. OVERTON
Deputy Attorney General



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TOM BLAKE
Deputy Attorney General

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11 Harrison, Judge of the Superior Court and the
Honorable Edmund G. Brown Jr., Attorney General of
the State of California

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13 **POINTS AND AUTHORITIES**
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15 Attorney General Brown was not a party in the state court case that plaintiff ostensibly seeks
16 to remove. The Attorney General joins in Judge Harrison's motion to remand or dismiss and
17 incorporates herein by reference the grounds set forth in Judge Harrison's motion.

18 The plaintiff's pleading^{1/} impermissibly seeks damages from the Attorney General. There
19 is no allegation that the Attorney General owed plaintiff any specific duty. Public entities are not
20 liable in tort for negligence except where there is a specific statute declaring them to be liable or
21 creating a specific duty of care. See *Munoz v. City of Union City*, 120 Cal. App. 4th 1077, 1097-98
22 (2004) (quoting *Eastburn v. Reg'l Fire Prot. Auth.*, 31 Cal. 4th 1175 (2003)).

23 Vague and conclusory allegations of official participation in alleged civil rights violations
24 (as at pg., 6 of the moving papers) are not sufficient to survive a motion to dismiss. *Ivey v. Board*

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26 1. It is unclear to moving party whether the plaintiff's papers should be construed as a notice
of removal of her state-court debt collection action or a new complaint for damages. See, Prayer for
27 Relief, pp. 8-9 of moving papers.

1 *of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, the doctrine of *respondeat superior* is
 2 inapplicable. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691-694 (1978).
 3 Civil conspiracy is not its own cause of action, and general accusations of conspiracy will not
 4 withstand a motion to dismiss. *Furomoto v. Lyman*, 362 F.Supp. 1267 (N.D. Cal. 1973). In the
 5 instant case, there can be no liability as to Attorney General Brown because he did not play a
 6 personal role in the alleged debt collection case in state court, nor is he alleged to have done so.
 7 None of the alleged facts indicate he, the elected Attorney General of the State of California, had
 8 direct or personal participation in the debt collection matters alleged by plaintiff. Vague allegations
 9 of conspiracy do not establish personal involvement in the incident. *Hanson v. Black*, 885 F.2d 642,
 10 646 (9th Cir. 1989) (vague allegation of a conspiracy between a police chief and subordinate officers
 11 insufficient to establish personal involvement).

12 There is no liability under 42 U.S.C. § 1983 on officials for actions of subordinate officers
 13 by reason of vicarious liability. *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989). Under 42
 14 U.S.C. § 1983, liability attaches to supervisory officials only when they personally participate in the
 15 constitutional violations. The Ninth Circuit applies this principle to high state officials. For
 16 example, in *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989), the court exempted Nevada's
 17 Attorney General from liability because he did not participate in alleged misconduct. Recently, the
 18 court affirmed the dismissal of claims against Washington's Governor, Attorney General, and other
 19 high ranking state officials because the plaintiff did not sufficiently allege personal involvement of
 20 the state officials. *Safouane v. Fleck*, No. 05-35394, 2007 U.S. App. LEXIS 8042, at *14-15 (9th
 21 Cir. March 30, 2007).

22 CONCLUSION

23 For the reasons set out above, this matter should be remanded or dismissed.

24 Dated: September 14, 2007

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2 Attorney General of the State of California

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